

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GARY ALAN NOBLE,	)	Case No. C06-579-JLR-JPD
	)	
Petitioner,	)	
	)	
v.	)	MINUTE ORDER RE:
	)	ORAL ARGUMENT
SANDRA CARTER,	)	
	)	
Respondent.	)	

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The following minute order is made at the direction of the Court, the Honorable James P. Donohue, United States Magistrate Judge:

The Court has set oral argument on the Petition for Habeas Corpus for Thursday, January 18, 2007, at 2:30 p.m. Each side will have up to 30 minutes to present argument. To assist the parties in their preparation, the Court is interested in having the following issues addressed in argument:

1. The Washington appellate courts failed to even mention *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394 (2001). Can a state court decision that fails to even cite this critical Supreme Court decision be held to not violate clearly established federal law?

2. In this case, it appears that some kind of a hearing took place before the juvenile court judge. For example, one of the orders of the King County Superior Court regarding the 1969 conviction directs the transcription of statements made by law enforcement officers during the juvenile court proceedings. *See* Administrative Record ("AR") at App. C. at 1-2 (order filed March 4, 1969). Is there any evidence in the record that the petitioner was

01 represented by counsel or waived his right to be represented while before the juvenile court?

02         3.       In *Kent v. United States*, 383 U.S. 541 (1966), the Supreme Court held that a  
03 juvenile court's determination to retain or waive jurisdiction over a defendant is a "critical  
04 stage" in a criminal proceeding, during which the basic guarantees of due process attach,  
05 including the right to counsel. While there is no "constitutional right to be tried in a juvenile  
06 court," *In re Personal Restraint of Boot*, 130 Wn.2d 553 (1996), can the state court appellate  
07 decisions in this matter be read consistently with *Kent*, particularly when it is not even  
08 mentioned?

09         4.       The petitioner was arrested on October 19, 1968, approximately three weeks  
10 before he turned 18 years of age (*see* AR, Ex. 9 at 6), and charged in King County Superior  
11 Court on November 18, 1968, approximately six days after he turned 18 years of age. *See* AR,  
12 Ex. 5 at 2-3. Under *State v. Kramer*, 72 Wn.2d 904, 907 (1968), when a juvenile cause is not  
13 heard on its merits prior to the time the juvenile reaches 18 years of age, the juvenile court  
14 loses jurisdiction over the cause. If this is the case, why doesn't the date of charge and guilty  
15 plea govern this matter?

16         5.       Does the Seventh Circuit's recent decision in *Grigsby v. Cotton*, 456 F.3d 727  
17 (7th Cir. 2006), provide support for the proposition that any juvenile decline hearing was  
18 optional and transfer to superior court automatic upon return of the information against  
19 petitioner, and for that reason, provision of counsel at the juvenile hearing (and the hearing  
20 itself) was not a "critical stage" under *Gideon* at the time it occurred?

21         This list is not meant to preclude counsel from addressing other issues as they deem  
22 appropriate.

23         DATED this 16th day of January, 2007.

24                         Bruce Rifkin  
25                         Clerk of the Court

26                         /s/ Peter H. Voelker  
                              Peter H. Voelker  
                              Deputy Clerk